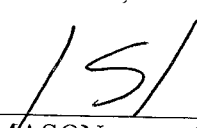


2. The State does not even attempt to respond to the point of Miss Anthony's motion – that the double enhancement serves no narrowing function. In fact, this Court asked this very question during oral arguments on May 11, 2010 regarding Count Two of the indictment.
3. The Florida Supreme Court has held that where a single act forms the basis of both an aggravated child abuse aggravating factor under section 921.141(5)(d) of the Florida Statutes and a first-degree felony murder charge, the aggravated child abuse allegation “merges” with the more serious homicide charge and the State is precluded from invoking the felony murder doctrine and is limited to proving first-degree murder only on the theory of premeditation for murder. That is, in such cases “the state is prohibited from using aggravated child abuse as the felony crime.” *Brooks v. State*, 918 So.2d 181, 197-98 (2005).
4. In fact, the list of enumerated aggravating circumstances in section 921.141(5)(d) is substantially similar to the list of felonies in the felony-murder portion of the first-degree murder statute. In fact, *every aggravating circumstance* in section 921.141(5)(d) - weighing in favor of a death sentence for the defendant - is also an enumerated factor that *qualifies* a defendant for a death sentence under *Fla. Stat. 782.04(1)(a)* which defines first degree murder.
5. To protect a defendant's right to due process and protection against cruel and unusual punishment under the Fifth, Eighth and Fourteenth Amendments of the United States Constitution, a death penalty statute must provide a “meaningful basis for distinguishing the few cases in which [the death penalty] is imposed from the many cases in which it is not.” *Gregg v. Georgia*, 428 U.S. 153, 188 (1976) quoting *Furman v. Georgia*, 408 U.S. 238, 313 (1972). In examining an aggravator that might be overbroad, the Court looks to


whether there is a risk that the statute will result in capricious or arbitrary imposition of death. *Gregg*, 428 U.S. 201. Fla. Stat. § 921.141(5)(d) does not satisfy those concerns. Fla. Stat. § 921.141(5)(d) fails to narrow the class of death eligible persons in a meaningful way, and thereby allows arbitrary and capricious application of the death penalty.

WHEREFORE, the Defendant CASEY MARIE ANTHONY respectfully requests this Honorable Court to Casey Marie Anthony's Motion to Declare Section 921.141(5)(d) Florida Statutes and/or the Section 921.141(5)(d) Standard Instruction Unconstitutional Facially and As Applied and to Preclude Their Application at Bar.

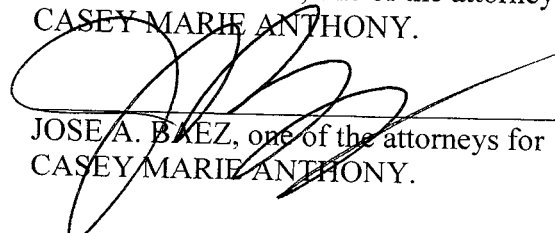
Respectfully submitted,



J. CHENEY MASON, one of the attorneys for
CASEY MARIE ANTHONY.



ANDREA D. LYON, one of the attorneys for
CASEY MARIE ANTHONY.



JOSE A. BAEZ, one of the attorneys for
CASEY MARIE ANTHONY.

Dated: June 5, 2010

J. Cheney Mason, P.A.
Bank of America Building
390 North Orange Avenue
Suite 2100
Orlando, FL 32801
407-843-5785 (Phone)

407-422-6858 (Fax)

Andrea D. Lyon
Director, Center for Justice in Capital Cases
DePaul University College of Law
25 E. Jackson Blvd., Suite 1050
Chicago, IL 60604
312-362-8294 (Phone)
312-362-6918 (Fax)

Jose A. Baez
The Baez Law Firm
522 Simpson Road
Kissimmee, FL 34744
407-705-2626 (Phone)
407-705-2625 (Fax)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail, fax and/or hand-delivered to the OFFICE OF STATE ATTORNEY, 415 N. Orange Ave, Orlando, FL 32801 AND to the CLERK OF THE CIRCUIT COURT, 425 N. Orange Avenue, Suite 410 Orlando, FL 32801, this 4th day of June, 2010.



JOSE A. BAEZ, ESQUIRE
FL Bar No.: 0013232
522 Simpson Road
Kissimmee, Florida, 34744
Tel.: (407) 705-2626
Fax.: (407) 705-2625